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April 10, 2015

## VIA ECF

Honorable John Gleeson  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: ***Todd C. Bank v. Independence Energy Group LLC and Independence Energy Alliance LLC, Case No. 1:12-cv-01369-JG-VMS***

Dear Judge Gleeson:

We represent Defendants Independence Energy Group LLC and Independence Energy Alliance LLC in the above-referenced matter. We write to request an adjournment of the oral argument currently set for Wednesday, May 27, 2015, and to supplement the grounds stated in our letter dated March 27, 2015, regarding Defendants' anticipated Motion for Summary Judgment.

Defendants respectfully request a short adjournment of oral argument on Defendants' Motion for Summary Judgment. Pursuant to Your Honor's Local Practices 1(F), Defendants state as follows:

1. The Court has scheduled oral argument for May 27, 2015 at 10:30 a.m. Defendants' counsel has a scheduling conflict with that date. Specifically, the undersigned lead counsel will be out of the country on a family vacation through May 29, 2015.
2. No previous request for an adjournment has been made with respect to oral argument.
3. No previous request for adjournment has been granted or denied.

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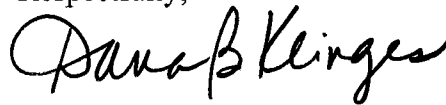
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4. Plaintiff Todd Bank consents to Defendants' request for adjournment. Both Mr. Bank and defendants' counsel are available for oral argument on June 5, 2015, if that date suits the Court. If not, Defendants respectfully request that the oral argument be rescheduled for a date convenient to the Court that is after May 29, 2015.

Defendants also write to alert the Court to an additional ground for summary judgment that arose after our letter of March 27. On March 19, 2015, Defendants served on Plaintiff an Offer of Judgment pursuant to Fed. R. Civ. P. 68 in the amount of \$1,500 plus recoverable costs up to the date of the offer – the maximum monetary amount Plaintiff could recover under the Telephone Consumer Protection Act, 47 U.S.C § 227(b)(1)(B) (the "TCPA") for the single pre-recorded telephone call he received. In addition, Defendants agreed to be enjoined from placing any future calls to Plaintiff in violation of the TCPA. The Offer of Judgment expired on April 2, 2015. Because Defendants offered the maximum relief available under the TCPA, this Court lacks jurisdiction due to mootness: Plaintiff has no remaining stake in this case. *See Doyle v. Midland Credit Mgmt*, 722 F.3d 78 (2d Cir. 2013) (in upholding Your Honor's dismissal based on an unaccepted Offer of Judgment, the Second Circuit "agree[d] with the district court that [plaintiff's] refusal to settle the case in return for [defendant's] offer . . . , notwithstanding [plaintiff's] acknowledgment that he could win no more, was sufficient ground to dismiss [the] case for lack of subject matter jurisdiction"); *Bank v. Caribbean Cruise Lines, LLC*, 1:12-cv-05572 (E.D.N.Y. Nov. 26, 2014) (Gleeson, J.) (dismissing action brought by Plaintiff Todd Bank under the TCPA on mootness grounds after Bank failed to accept an offer of judgment for the maximum amount available under the TCPA). Defendants will address this issue further in their motion papers.

Respectfully,



Dana B. Klimes

cc: Todd Bank, Esq. (via ECF)